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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101
BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
International Mineral Technologies)
Fairbury, Nebraska)
)
Respondent)
)
Proceedings under Section 309(g) of the)
Clean Water Act, 33 U.S.C. § 1319(g))
_____)

Docket No. CWA-07-2010-0118

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency, Region 7 (EPA) and International Mineral Technologies, LLC, d/b/a Tetra Micronutrients, (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. " 22.13(b) and 22.18(b)(2).

ALLEGATIONS

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA), 33 U.S.C. § 1319(g), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22.

2. This Consent Agreement and Final Order serves as notice that the United States Environmental Protection Agency (EPA) has reason to believe that Respondent has violated Sections 301 and 402 of the CWA, 33 U.S.C. § 1311 and § 1342, and regulations promulgated thereunder.

Parties

3. The Complainant, by delegation from the Administrator of the EPA, and the Regional Administrator, EPA, Region VII, is the Director of the Water, Wetlands and Pesticides Division of EPA Region VII.

4. Respondent is International Mineral Technologies, LLC, a Nebraska limited liability company existing under the laws of Nebraska and authorized to conduct business in the State of Nebraska.

Statutory and Regulatory Framework

5. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, inter alia, Section 402 of the CWA, 33 U.S.C. § 1342. Section 402 of the CWA, provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to that Section.

6. The CWA prohibits the discharge of "pollutants" from a "point source" into a "navigable water" of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

7. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), sets forth requirements for the issuance of NPDES permits for the discharge of storm water. Section 402(p) of the CWA, requires, in part, that a discharge of storm water associated with an industrial activity must conform with the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA.

8. Pursuant to Section 402(p) of the CWA, EPA promulgated regulations setting forth the NPDES permit requirements for storm water discharges at 40 C.F.R. § 122.26.

9. 40 C.F.R. § 122.26(a)(1)(ii) and 122.26(c) requires dischargers of storm water associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated storm water general permit.

10. 40 C.F.R. § 122.26(b)(14)(vi) defines storm water discharge associated with industrial activity, in part, as facilities involved in industrial activities including those classified as Standard Industrial Classification 2819.

11. The Nebraska Department of Environmental Quality (NDEQ) is the state agency with the authority to administer the federal NPDES program in Nebraska pursuant to Section 402 of the CWA. EPA maintains concurrent enforcement authority with delegated states for violations of the CWA.

12. The NDEQ implemented a General Permit for the discharge of industrial storm water under the NPDES, Permit No. NER000000 on August 28, 2002, which remains under administrative extension. The permit governs storm water discharges associated with Respondent's facility.

Factual Background

13. Respondent is a "person" as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

14. At all times relevant to this action, Respondent was the owner and/or operator of an industrial facility that produces zinc and manganese fertilizers and feed supplements, located at 71025 568th Avenue, Fairbury, Nebraska (the Site) with a SIC code of 2819.

15. Storm water, snow melt, surface drainage and runoff water leaves Respondent's facility and goes directly into Brawner Creek. The runoff and drainage from Respondent's facility is "storm water" as defined by 40 C.F.R. § 122.26(b)(13).

16. The Storm water contained "pollutants" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

17. The Site had "storm water discharges associated with industrial activity" as defined by 40 C.F.R. § 122.26(b)(14), and is a "point source" as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

18. Respondent discharged pollutants into "navigable waters" as defined by CWA Section 502, 33 U.S.C § 1362.

19. Storm water runoff from Respondent's industrial site results in the addition of pollutants from a point source to navigable waters, and thus is the "discharge of a pollutant" as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

20. Respondent's discharge of pollutants associated with an industrial activity, as defined by 40 C.F.R. § 122.26(b)(14)(vi), requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

21. Respondent applied for and was issued NPDES permit coverage under the general permit described in paragraph 12 above. NDEQ assigned Respondent Permit No. 703, which was issued in December 1997. Respondent reapplied for permit coverage on September 28,

2009. Respondent currently operates under Permit No. NE0138347, which was issued on April 1, 2010, and expires on March 31, 2015.

22. On March 24-26, 2009, EPA performed an inspection of the Site under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). The purpose of the inspection was to evaluate the management of storm water at the site in accordance with the CWA and Respondent's NPDES permit.

Findings of Violation

Count 1

Failure to Comply with Effluent Limitations

23. The facts stated in paragraphs 13 through 22 above are herein incorporated.

24. Appendix A, Section A.5 of Respondent's NPDES permit prohibits the discharge of pollutants to waters of the State that cause a violation of Nebraska's Surface Water Quality Standards.

25. Respondent's monitoring of stormwater discharges demonstrate that discharges of pollutants from the Site to Brawner Creek caused violations of Water Quality Standards.

26. Respondent's failure to comply with water quality-based effluent limitations is a violation of Respondent's permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p), and implementing regulations.

Count 2

Failure to Review and Update Stormwater Pollution Prevention Plan (SWPPP)

27. The facts stated in paragraphs 13 through 22 above are herein incorporated.

28. Section D.4.a of Respondent's NPDES permit requires that Respondent's SWPPP shall be reviewed at least annually. Section D.4.c of the permit requires that Respondent shall maintain records of who conducted the SWPPP review, the findings of the review and any changes made to the SWPPP.

29. The inspection and document review referenced in paragraph 22 above revealed that, with the exception of 2005 and 2006, Respondent failed to review and update its SWPPP between 1998 and 2008.

30. Respondent's failure to adequately review and update its SWPPP are violations of Respondent's NPDES permit, and as such, are violations of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and implementing regulations.

Count 3

Failure to Inspect and Document Inspections

31. The facts stated in paragraphs 13 through 22 above are herein incorporated.
32. Section D.3.a (i) of Respondent's NPDES permit requires that Respondent shall inspect its facility at least semi-annually to ensure that the SWPPP is being effectively carried out. Section D.3.b. requires that Respondent shall maintain records of the facility inspections.
33. The inspection and document review referenced in paragraph 22 above revealed that Respondent failed to conduct and record semi-annual inspections between 2007 and 2009.
34. Respondent's failure to conduct and record semi-annual inspections are violations of Respondent's NPDES permit, and as such, are violations of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and implementing regulations.

CONSENT AGREEMENT

General Terms

1. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Final Order portion of this Consent Agreement and Final Order.
2. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above, and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this Consent Agreement and Final Order.
3. Respondent neither admits nor denies the factual allegations set forth above.
4. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order portion of this Consent Agreement and Final Order.
5. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees incurred as a result of this action.
6. This Consent Agreement and Final Order addresses all civil and administrative claims for the Clean Water Act violations identified above, existing through the effective date of this Consent Agreement and Final Order. Complainant reserves the right to take enforcement action with respect to any other violations of the Clean Water Act or other applicable law.
7. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of its knowledge, Respondent's facility is in compliance with all requirements of Section 402(p) of the Clean Water Act, 33 U.S.C. §1342(p), and all regulations promulgated thereunder.

8. The effect of settlement described in paragraph 6 is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 7, above, of this Consent Agreement and Final Order.

9. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms of the Final Order portion of this Consent Agreement and Final Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, and to seek penalties against Respondent or to seek any other remedy allowed by law.

10. Complainant reserves the right to take enforcement action against Respondent for any future violations of the CWA and its implementing regulations and to enforce the terms and conditions of this Consent Agreement and Final Order.

11. The Final Order shall be entered and become effective only after the conclusion of the period of public notice and comment required pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45.

12. Respondent and Complainant shall bear their respective costs and attorney's fees.

13. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

Penalty

14. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of the civil penalty as set forth in this Consent Agreement.

15. Respondent shall pay a civil penalty of Thirty Thousand dollars (\$30,000), within thirty (30) days of entry of the Final Order. Payment shall be by cashier's or certified check made payable to the "United States Treasury" and shall be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

This payment shall reference docket number CWA-07-2010-0118.

16. A copy of the check should be sent to:

Regional Hearing Clerk
United States Environmental Protection Agency - Region VII
901 N. Fifth Street
Kansas City, Kansas 66101

and to:

J. Daniel Breedlove
Assistant Regional Counsel
United States Environmental Protection Agency - Region VII
901 N. Fifth Street
Kansas City, Kansas 66101.

17. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

18. Respondent understands that the failure to pay any portion of the civil penalty assessed herein in accordance with the provisions of this order may result in commencement of a civil action in Federal District Court to recover the total penalty, together with interest at the applicable statutory rate.

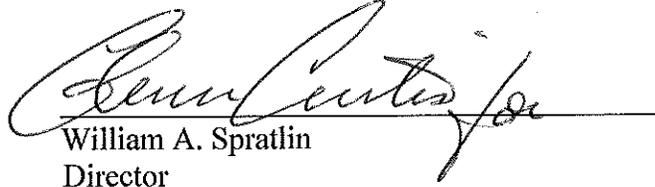
19. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

20. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of the Consent Agreement and Final Order and to legally bind Respondent to it.

FOR COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

9/21/2010

Date



William A. Spratlin

Director

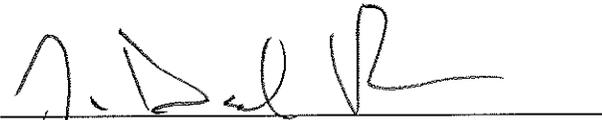
Water, Wetlands and Pesticides Division

U.S. Environmental Protection Agency

Region 7

9/21/2010

Date



J. Daniel Breedlove

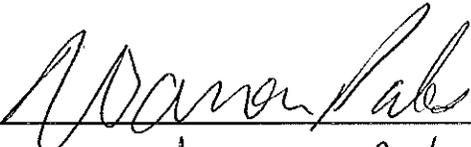
Assistant Regional Counsel

U.S. Environmental Protection Agency

Region 7

FOR RESPONDENT:
International Mineral Technologies, LLC
a Nebraska limited liability company

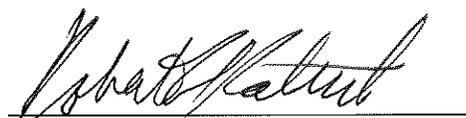
8-3-10
Date


Name (Print) Warren Pales
Title Plant Manager

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby ordered to comply with the terms of the above Consent Agreement, effective immediately.

IT IS SO ORDERED.



Robert Patrick
Regional Judicial Officer

September 22, 2010
Date

IN THE MATTER OF International Mineral Technologies, Respondent
Docket No. CWA-07-2010-0118

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

J. Daniel Breedlove
Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Michael S. Mostek
KOLEY JESSEN P.C., L.L.O.
One Pacific Place, Suite 800
1125 South 103rd Street
Omaha, Nebraska 68124

Dated: 9/23/10



Kathy Robinson
Hearing Clerk, Region 7